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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/204,013	12/01/1998	WAYNE D. BALDWIN	8530.318USC1	4928

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 05/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/204,013

Applicant(s)

BALDWIN ET AL.

Examiner

Joseph M Pelham

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-23, 25, 26 and 29-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-23, 25, 26, and 29-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. The Examiner acknowledges Applicant's submission of the Request for Reconsideration filed 4/9/02. Claims 20-23, 25, 26 and 29-36 remain pending.

Claim Rejections - 35 USC § 103

2. Claims 20-23, 25, 26 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5454471 to Norvell in view of U.S. Patent 5750962 to Hyatt and either U.S. Patent 4816646 to Solomon et al or 4806736 to Schirico.

Norvell discloses, at Figures 1-5, column 4, lines 6-9, and column 7, line 21, through column 8, line 7, a method for transporting cooked pizzas substantially as claimed, in which boxed pizzas are transported; also including an interior sub-chamber for a heat retention member and hook and loop fasteners. Norvell does disclose electric heating of the heat retention member (by battery), but does not disclose a heating coil in thermal contact with the surface of a sealed heat retention member, a thermostat which opens at 95° - 105°C, a dielectric oil heat retention member, a rigid base for the heat retention member, or applying AC power to the heat retention member while it is in the subchamber, prior to inserting a pizza.

Referring to Figures 1-8, and column 3, lines 21-60, Hyatt discloses a heating coil 24, 26 in thermal contact with a sealed heat retention member 18, a thermostat 30, and AC or DC power for the heating coil. It would have been obvious to one of ordinary skill in the art to adapt the coil, thermostat, and power means of Hyatt to the device of Norvell to obviate the need for a microwave oven in which to heat the heat retention member prior to use in a pizza carrier, allowing more efficient, or equivalently more convenient, use of the carrier.

Figures and column 3 line 68, through column 4, line 3, of Schirico, or Figure 4 and column 3, lines 1-12, of Solomon et al, discloses applying AC power to a heat retention member within a pizza carrier, prior to inserting a pizza. It would have been obvious to one of ordinary skill in the art to heat the heat retention member of Norvell in view of Hyatt within a pizza carrier, after the manner of either Solomon et al or Schirico, so that the carrier would be immediately ready for use upon heating the heat retention member, that is, so that .

A rigid base for the heat retention member, or a thermostat which opens at 95° - 105°C, cannot be regarded to patentably distinguish the claimed invention over the prior art of record, since both are well known in the art or determined by routine engineering considerations. Hyatt discloses food warmers as an intended application of the heating device, and such use would necessitate a rigid form to allow handling of the device, and a thermostat which opens at 95° - 105°C would be dictated by the conventionally desired temperature of the particular food placed in the warmer.

Response to Arguments

3. Applicant's arguments filed 4/9/02 have been fully considered but they are not persuasive.

At pages 2-3 of the Request, Applicant argues against Norvell individually; however, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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At page 3, first full paragraph, Applicant argues that the examiner's citing of "more convenient heating" when the warmer of Hyatt is used with the carrier of Norvell is without merit. As discussed above in item 2, the warmer of Hyatt does not require the use of a microwave oven, very likely several of them, which would be required if the warmer of Norvell were used; they require only an electrical cord and outlet, a significant saving of labor in transporting the warmers to and from a microwave oven, since they may be heated anywhere an electric power cord can reach, and, moreover, a saving of space which is quite significant in a commercial food service establishment. Pace Applicant's contention that the warmer of Hyatt would be "less convenient" than that of Norvell because it would require the proximity of a power cord which must further be plugged and unplugged (bridging pages 3 and 4 of the Request), the requirement of a microwave oven would appear to be relatively more inconvenient.

At page 4, first full paragraph, Applicant states that he does not understand how the examiner reasons the carrier of Norvell in view of Hyatt to be rendered more immediately ready for use by modification in accord with the disclosure of Solomon et al or Schirico, because "Norvell already...tells...that his food transport container is ready for use once the sealed packets are heated in a microwave oven and then placed inside of his food transport container."

If the heat retention member is retained in the pizza carrier, and several carriers may be heated simultaneously such that one need only insert the boxed pizza in the carrier, after the manner of Solomon et al or Schirico, then precisely the preparatory step in which the "sealed packets are heated in a microwave oven and then placed inside of his food transport container" is reduced to merely plugging in the carrier assemblies, which are then immediately ready for use.


Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication should be directed to Joseph Pelham at telephone number (703) 308-1709, or fax (703) 308-7764.

JP
May 7, 2002


JOSEPH PELHAM
PRIMARY EXAMINER